

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

American Meter Company and Honeywell
International, Inc.,
Appellant,

v.

Otoe County Board of Equalization,
Appellee.

Case No: 16C 0133 and 16C 0134

Decision and Order

For the Appellant:

Christopher A. Stafford,
Fredrikson & Byron, P.A.

For the Appellee:

John R. Palmtag,
Deputy Otoe County Attorney

This appeal was heard before Commissioners Steven Keetle and James Kuhn.

I. THE SUBJECT PROPERTY

The Subject Property consists of two commercial parcels located in Otoe County. The Subject Property is improved with two buildings: the main plant building, and the east building. The legal description of the Subject Property are found at Exhibits 1 & 2. The property record card for the Subject Property are found at Exhibits 6 & 7.

II. PROCEDURAL HISTORY

The Otoe County Assessor determined that the assessed value of the parcel of the Subject Property in Case No. 16C-133 was \$5,424,990 for tax year 2016. American Meter Company and Honeywell International, Inc. (the Taxpayer) protested this assessment to the Otoe County Board of Equalization (the County Board) and requested an assessed valuation of \$1,886,200. The Otoe County Board determined that the taxable value of the Subject Property for tax year 2016 was \$5,424,990.¹

The Otoe County Assessor determined that the assessed value of the parcel of the Subject Property was \$1,765,670 for tax year 2016. American Meter Company and Honeywell International, Inc. (the Taxpayer) protested this assessment to the Otoe County Board of

¹ Exhibit 1.

Equalization (the County Board) and requested an assessed valuation of \$613,800. The Otoe County Board determined that the taxable value of the Subject Property for tax year 2016 was \$1,765,670.²

The Taxpayer appealed the decisions of the County Board to the Tax Equalization and Review Commission (Commission). Prior to the hearing, the parties exchanged exhibits and submitted a Pre-Hearing Conference Report, as ordered by the Commission. In the Pre-Hearing Conference Report, the parties stipulated to the receipt of exchanged exhibits 1 through 9. The Commission held a hearing on November 14, 2017.

III. STANDARD OF REVIEW

The Commission's review of the determination by a County Board of Equalization is de novo.³ When the Commission considers an appeal of a decision of a County Board of Equalization, a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."⁴

That presumption remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board.⁵

The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁶ Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁷

² Exhibit 2.

³ See Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

⁴ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁵ *Id.*

⁶ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁷ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁸ The County Board need not put on any evidence to support its valuation of the property at issue unless the taxpayer establishes the Board's valuation was unreasonable or arbitrary.⁹

In an appeal, the commission “may determine any question raised in the proceeding upon which an order, decision, determination, or action appealed from is based [and] may consider all questions necessary to determine taxable value of property as it hears an appeal or cross appeal.”¹⁰ The commission may also “take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge...,” and may “utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.”¹¹ The Commission’s Decision and Order shall include findings of fact and conclusions of law.¹²

IV. VALUATION

A. Law

Under Nebraska law,

[a]ctual value is the most probable price expressed in terms of money that a property will bring if exposed for sale in the open market, or in an arm’s length transaction, between a willing buyer and a willing seller, both of whom are knowledgeable concerning all the uses to which the real property is adapted and for which the real property is capable of being used. In analyzing the uses and restrictions applicable to real property the analysis shall include a full description of the physical characteristics of the real property and an identification of the property rights valued.¹³

“Actual value may be determined using professionally accepted mass appraisal methods, including, but not limited to, the (1) sales comparison approach using the guidelines in section 77-1371, (2) income approach, and (3) cost approach.”¹⁴ “Actual value, market value, and fair market value mean exactly the same thing.”¹⁵ Taxable value is the percentage of actual value

⁸ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁹ *Bottorf v. Clay County Bd. of Equalization*, 7 Neb.App. 162, 580 N.W.2d 561 (1998).

¹⁰ Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.).

¹¹ Neb. Rev. Stat. §77-5016(6) (2016 Cum. Supp.).

¹² Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

¹³ Neb. Rev. Stat. §77-112 (Reissue 2009).

¹⁴ *Id.*

¹⁵ *Omaha Country Club v. Douglas County Board of Equalization, et al.*, 11 Neb.App. 171, 180, 645 N.W.2d 821, 829 (2002).

subject to taxation as directed by section 77-201 of Nebraska Statutes and has the same meaning as assessed value.¹⁶ All real property in Nebraska subject to taxation shall be assessed as of January 1.¹⁷ All taxable real property, with the exception of agricultural land and horticultural land, shall be valued at actual value for purposes of taxation.¹⁸

B. Summary of the Evidence

The Subject Property consists of two commercial industrial parcels which are part of four contiguous parcels owned by American Meter Company. These two parcels which are the subjects of these appeals are each improved with a building. The main plant building is on one parcel and contains approximately 218,805 square feet used for heavy industrial manufacturing, distribution warehouse and office space.¹⁹ The east building is on the other parcel and contains approximately 49,800 square feet of industrial flex space.²⁰

The Assessor testified that as a large industrial property the Subject Property is unique for Otoe County. Because there were no comparable sales in Otoe County the Assessor did not utilize the sales comparison approach to determine assessed values for the Subject Property for tax year 2016. The Assessor indicated that the Subject Property is owner occupied so rental income and expense data was not available and she did not have any other income and expense data for large industrial properties located in Otoe County. The Assessor did not therefore calculate an income approach value for the Subject Property.

Because of these factors the Assessor calculated the assessed value of the Subject Property using the cost approach to value. The Assessor utilized a Computer Assisted Mass Appraisal (CAMA) system which contained cost calculation data from Marshall and Swift. The Assessor testified that land values were determined through an industrial and commercial land value study completed in 2012. Additionally the Assessor offered testimony regarding the research she did to determine depreciation. The Assessor indicated that there was no reliable data available to her

¹⁶ Neb. Rev. Stat. §77-131 (Reissue 2009).

¹⁷ See Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

¹⁸ Neb. Rev. Stat. §77-201(1) (Reissue 2009).

¹⁹ Exhibit 7:2

²⁰ Exhibit 6:2

to determine the economic depreciation or external obsolescence to apply to the Subject Property.

The Assessor testified that she retained Great Plains Appraisal to obtain a second opinion as to the value of the Subject Property.²¹ While the Great Plains Appraisal indicated a higher assessed value for the Subject Property than that determined by the Assessor using the cost approach, the Assessor did not change her initial determination of value after receiving the determination of value for the Subject Properties from Great Plains Appraisal.²² The Assessor also testified that she reviewed and considered the Brokers Opinion of Value for the Subject Property provided to her by the Taxpayer.²³ While the Broker's Opinion of Value indicated a lower value for the Subject Property, the Assessor testified that she did not change her initial determination of value for the Subject Property because she determined that the sales used in this report were less comparable than those in the Great Plains Appraisal.

Wayne Kubert prepared the report on behalf of Great Plains Appraisal, valuing the Subject Property together with two contiguous parcels owned by the Taxpayer as a single economic unit (County Report).²⁴ The County Report relied on the cost and sales comparison approaches to value and allocated the total value between the four parcels. Mr. Kubert testified that the County Report was not compliant with the Uniform Standards of Appraisal Practice (USPAP), but that as an employee or independent contractor retained by the County Assessor it wasn't required to be.²⁵ Mr. Kubert testified that the supporting information necessary to make the County Report USPAP compliant was contained in his work files. Mr. Kubert testified that he personally inspected the Subject Property and that he gave more weight to the sales comparison approach than the Cost approach when determining value for the Subject Property. Mr. Kubert offered testimony regarding the sales utilized in the sales comparison approach and the various adjustments made to make them comparable to the Subject Property. Mr. Kubert admitted on

²¹ Note, under Neb. Rev. Stat. §76-2221(9)(2016 Cum. Supp.) any person , including an independent contractor, retained by a county to assist in the appraisal of real property as performed by the county assessor of such county subject to the standards established by the Tax Commissioner pursuant to section 77-1301.01. A person so retained shall be under the direction and responsibility of the county assessor.

²² See, Exhibit 5

²³ See, Exhibit 8

²⁴ Exhibit 5.

²⁵ See, Neb. Rev. Stat. §76-2221(9)(2016 Cum. Supp.)

cross examination that that the square footage of the Subject Property used in the County Report was incorrect.

David Wellsandt testified regarding a Review Appraisal Report (the Review Report) of the County Report. The Review Report indicated that it was prepared in conformity with USPAP. The Commission notes that the County Report is not a USPAP compliant appraisal report and was not intended to be, but rather is a valuation report prepared under the direction and responsibility of the County Assessor.²⁶ The Review Report does not review or discuss the determination of value for the Subject Property made by the County Assessor or the County Board.

The Review Report determines that the County Report is not credible for its intended use while at the same time indicating that it was unable to verify the information contained in the County Report, information that the County Report stated was not present and which was not required to be in the County Report.²⁷ The Review Report then goes on to its primary focus, the presentation of a determination of value based exclusively on the sales comparison approach without the preparation of a full appraisal report. Mr. Wellsandt testified that he relied on the information in the County Report when preparing his Review Report and that he did not inspect the Subject Property. Mr. Wellsandt testified that he did not perform a cost approach to valuation because he believed the age of the Subject Property precluded it. Additionally, Mr. Wellsandt indicated that he did not research land sales when preparing the Review Report.

The Nebraska Supreme Court has held that when an independent appraiser using professionally approved methods of mass appraisal certifies that an appraisal was performed according to professional standards, the appraisal is considered competent evidence under Nebraska law which would rebut the presumption of validity of the county's valuation.²⁸ This determination was made by the Court when the evidence included full appraisal reports utilizing all three methods of valuation provided for in Neb. Rev. Stat. §77-112, which is not the case in the present matter. Assuming without deciding that a review appraisal report certified as being

²⁶ See, Exhibit 5 page 2.

²⁷ See, Exhibit 5 pages 6-10

²⁸ *JQH La Vista v. Sarpy Cty. Bd. of Equal.* 285 Neb. 120, 126, 825 N.W.2d 447,453 (2013) citing, *US Ecology v. Boyd Cty. Bd. of Equal.* 256 Neb. 7, 588 N.W.2d 575 (1999).

prepared according to professional standards would rebut the presumption of validity of the county's valuation in the same manner as an appraisal utilizing all three methods of valuation, the Commission then looks to the evidence presented that the County Board's decision was unreasonable or arbitrary. The Commission finds that the Taxpayer has failed to produce clear and convincing evidence that the determination of assessed value made by the County Assessor and upheld by the County Board was unreasonable or arbitrary. Neither the County Report or the Review Report are clear and convincing evidence of the actual value of the Subject Property for tax year 2016, therefore there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

V. CONCLUSION

The Commission finds that there is not clear and convincing evidence that the County Board's decisions were arbitrary or unreasonable.

For all of the reasons set forth above, the appeals of the Taxpayer should be denied.

VI. ORDER

IT IS ORDERED THAT:

1. The decisions of the Otoe County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 are affirmed.²⁹
2. The taxable value of the Subject Property for tax year 2016 are:

Case No. 16C-133

| | |
|---------------|--------------------|
| Land: | \$ 304,560 |
| Improvements: | <u>\$5,120,430</u> |
| Total: | \$5,424,990 |

Case No. 16C-134

| | |
|---------------|--------------------|
| Land: | \$ 128,520 |
| Improvements: | <u>\$1,637,150</u> |
| Total: | \$1,765,670 |

²⁹ Taxable value, as determined by the County Board, was based upon the evidence at the time of the Protest proceeding. At the appeal hearing before the Commission, both parties were permitted to submit evidence that may not have been considered by the County Board of Equalization at the protest proceeding.

3. This Decision and Order, if no appeal is timely filed, shall be certified to the Otoe County Treasurer and the Otoe County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order is denied.
5. Each party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective for purposes of appeal on May 14, 2018.³⁰

Signed and Sealed: May 14, 2018

Steven A. Keetle, Commissioner

SEAL

James D. Kuhn, Commissioner

Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.

³⁰ Appeals from any decision of the Commission must satisfy the requirements of Neb. Rev. Stat. §77-5019 (2016 Cum. Supp.) and other provisions of Nebraska Statutes and Court Rules.